

EXHIBIT 21

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789(BRL)

Debtor.

-----x
IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION
OF JEFFREY M. WEINGARTEN

* * *

TRANSCRIPT of testimony as reported
by NANCY C. BENDISH, Certified Court Reporter,
RMR, CRR and Notary Public of the State of
New York, at the offices of Baker Hostetler,
45 Rockefeller Plaza, New York, New York, on
Wednesday, July 15, 2015, commencing at 10:10 a.m.

1 returns.

2 Q. And was Madoff -- is it your
3 understanding -- strike that.

4 Was Madoff running a split-strike
5 conversion strategy?

6 A. Yes. He was running a
7 split-strike conversion strategy.

8 Q. When you say better than would be
9 expected from a typical split-strike, what do
10 you mean by better -- what do you mean by better
11 than?

12 A. Well, as I said before, if the
13 split-strike conversion strategy, for example,
14 was put on at the beginning of the year and left
15 on for the entire year, I would have expected
16 returns to be not quite as good as they were.

17 Q. So it's just the length of the
18 execution and the strategy would result in lower
19 returns; is that correct?

20 A. I think I might say it the
21 opposite, that by being in the market at certain
22 times and being out of the market at certain
23 times, it was possible to do better than staying
24 in the markets the entire time.

25 Q. Do you -- have you done an

1 analysis on the returns in the Merkin fund BLMIS
2 accounts?

3 A. I've looked at the funds in the
4 Merkin accounts, yes.

5 Q. Have you done an analysis of the
6 transactions that occurred in the Merkin fund's
7 BLMIS accounts?

8 A. I've certainly looked at some of
9 the transactions that occurred in the account,
10 yes.

11 Q. When you say some of the
12 transactions, what do you mean by that?

13 A. Well, I can't say that I've looked
14 at every single transaction done over the entire
15 period in which Merkin was invested with Madoff.

16 Q. Okay. Can you tell me
17 approximately how many transactions you've
18 looked at?

19 A. No, I can't. Only because I don't
20 remember. I've looked at a number of
21 transactions and I've looked at -- I've looked
22 at a number of transactions. I can't tell you
23 how many of the transactions I looked at.

24 Q. Did you look at the -- I'm sorry
25 to be flipping around, but --

1 A. That's okay, I can manage.

2 Q. Take a look at the bottom of page
3 3 of your report. It says, where it's the last
4 full paragraph, it says, "It is also clear that
5 the philosophy would forego potential higher
6 profit opportunities in order to avoid risk of
7 loss. For example, being out of the market
8 around highly volatile periods during which
9 options expire would be part of the philosophy."

10 Did you do an analysis to
11 determine if -- strike that.

12 Do you have an understanding of
13 when Mr. Madoff was out of the market?

14 A. I have an understanding that there
15 were times when he was out of the markets, yes.

16 Q. And do you have an understanding
17 of what those times were?

18 A. Well, they were generally at the
19 end of -- I believe it was the end of quarters
20 or the end of the year, for sure.

21 Q. And were those -- did you do any
22 analysis to determine if those were highly
23 volatile periods of time when he was out of the
24 market?

25 A. I didn't do an analysis

1 specifically, but having been a fund manager
2 myself for many years, I know that there are
3 certain times during the year, and very
4 definitely at the end of the year, when, for a
5 combination of reasons markets and individual
6 securities are unusually volatile.

7 Q. But you didn't do an analysis on
8 the transactions that were occurring in
9 Mr. Madoff -- in the Madoff fund BLMIS accounts,
10 did you?

11 A. No. It was sufficient for me to
12 understand that there were times when the
13 markets were volatile. And that I would
14 understand why someone would choose not to be in
15 markets at those particular times to avoid that
16 particular volatility.

17 Q. Did you make a determination if
18 the market was particularly volatile at the end
19 of each quarter?

20 A. Again, my experience as a fund
21 manager is that there were times when markets,
22 and particularly individual stocks, were
23 particularly volatile at the end of each
24 quarter, largely because many funds would engage
25 in what was typically called window dressing.

1 how Mr. Merkin was able to predict the market
2 movement?

3 A. I don't know how he was able to
4 predict the market movement, but it was pretty
5 clear to me that over the period, at least one
6 or two of the periods that I looked at, that he
7 was able to take advantage of a market movement
8 that was unusual and was not sustainable for the
9 entire year. And that's why I was able to make
10 the statement that had he been engaging in a
11 split-strike conversion strategy and implement
12 it at the beginning of the year and took it off
13 at the end of the year, his returns might not
14 have been as good as the returns he generated,
15 or allegedly generated, because he was able to
16 take advantage of intra-year market movement
17 that enhanced his returns.

18 Q. And did you find this to be true
19 for the handful of transactions that you looked
20 at?

21 A. Yes.

22 Q. And when you say you looked at
23 transactions, are you looking -- is it more than
24 ten transactions?

25 A. No. I actually only looked at a

1 few -- a couple of transactions that I remember.
2 I mean, I didn't go through many of them, but I
3 looked at a couple and was able to see exactly
4 how he was able to do -- how he was able to
5 generate returns. For example, how he was able
6 to generate positive returns in down markets.

7 Q. Okay. When you say a couple of
8 transactions, are you saying two or three
9 transactions?

10 A. Yes.

11 Q. And for what time period were
12 those transactions?

13 A. Again, it was a while ago, so I
14 don't remember exactly. I think one was in
15 mid-2000s, 2004, something like that, and one
16 was in 2007. Those are the only two that I
17 remember off the top of my head.

18 Q. So other than those two and
19 possibly a third, you didn't look at any other
20 transactions in the Merkin fund BLMIS accounts?

21 A. I don't remember looking at any
22 others but, again, I looked at those two and I
23 got a pretty good idea of how the timing of the
24 investments would generate significant benefits
25 over a buy/hold split-strike conversion

1 A. Could you repeat that question.

2 Q. Did you confirm or do any analysis
3 to confirm that execution -- strike that.

4 Did you do any analysis to confirm
5 that the returns in the Merkin fund BLMIS
6 accounts were the result of Madoff's
7 particularly good execution?

8 A. I did not do any myself. As I
9 said, there were enough people who did that
10 analysis or believed that execution was superior
11 and that would have enhanced the returns.
12 Again, over what you might consider
13 straightforward split-strike conversion
14 strategy.

15 Q. And who are you referring to when
16 you say enough people did that analysis?

17 A. Well, for example, Mr. Pomerantz
18 was one of them.

19 Q. And you reviewed Dr. Pomerantz's
20 report? Did you review Dr. Pomerantz's report
21 in preparation of your rebuttal report?

22 A. Yes. And I read his transcript, I
23 think I said, subsequent to my coming here --
24 prior to my coming here, subsequent to my
25 submitting the rebuttal.

1 Q. Take a look at page 4 of your
2 report.

3 A. Yes.

4 Q. The top partial paragraph where it
5 says, "Mr. Merkin understood." Do you see that?

6 A. Yes.

7 Q. It says: "Mr. Merkin understood
8 that Mr. Madoff had, by virtue of his long
9 experience, the knowledge and ability to take
10 advantage of both market timing and stock
11 selection to improve returns over that which
12 would have been generated by a formulaic putting
13 on of the trades."

14 Do you see that there?

15 A. Yes.

16 Q. How did you come to that
17 understanding?

18 A. Which understanding is that?

19 Q. Can you explain what you mean
20 there in that sentence?

21 A. Well, what I meant was that
22 Mr. Merkin believed, understood, that Madoff's
23 ability to predict short-term market movements
24 would be an important factor in his ability to
25 generate returns, and that the ability to

1 predict short-term market movements was some
2 combination of a model, access to order flow and
3 his vast experience in the marketplace.

4 Q. How do you know this is what
5 Mr. Merkin believed?

6 A. Again, in reading various of his
7 notes and testimonies, depositions, when asked
8 to explain how he thought Madoff generated
9 returns, this was my interpretation and my
10 summary of all of the various comments that
11 Mr. Merkin made. It was certainly the inference
12 that I drew from the various comments that
13 Mr. Merkin made about the alleged returns that
14 Madoff was making.

15 Q. Do you know if Mr. Merkin
16 confirmed that Madoff's ability to predict
17 short-term market movements and his ability
18 to -- strike that.

19 Do you know if Mr. Merkin
20 confirmed that Mr. Madoff's ability to predict
21 short-term market movements was a factor in
22 generating the returns in the BLMIS accounts?

23 A. I don't know what Mr. Merkin or
24 how Mr. Merkin confirmed that. As I said, I
25 inferred from many of his comments that that is

1 certainly what he believed.

2 I could certainly imagine, for
3 example, that in looking how the fund performed
4 in, for example, down markets, how he could have
5 timed things such that he could make money, he
6 would have certainly seen that there were times
7 when the market was down and Madoff did make
8 money, but exactly how he confirmed in his own
9 mind I'm not entirely sure.

10 But as I said, I inferred from the
11 many comments that he made that he actually
12 believed that some combination of vast
13 experience in the market, access to order flow,
14 perhaps a proprietary model, all contributed to
15 his ability to time the market such that he
16 could earn returns above those which a
17 straightforward split-strike conversion strategy
18 would have returned and, indeed when I looked at
19 some of the results I was able to confirm in my
20 own mind how he was able to do that, and that
21 his market timing ability clearly was
22 demonstrable.

23 Q. Can you turn to page, in your
24 rebuttal report, which is the second exhibit,
25 take a look at page 2 of that report.

1 think he had an ability to time the markets, I
2 wasn't only referring to market direction. I
3 said he was able to time pricing of some of the
4 options, and what goes into the pricing of
5 options is both direction and the implied
6 volatility in the option.

7 And it appeared in the times that
8 I was looking at is that he was able to make
9 money in down markets because of the way he was
10 able to take advantage of the pricing of the
11 options.

12 Q. And is that a skill set that you
13 say that you don't have?

14 A. Among the many, yes.

15 Q. And are there any other skill sets
16 that would attribute to making money in a down
17 market?

18 A. Well, I'm sure there are many
19 other skill sets that could allow you to make
20 money in a down market. So I was particularly
21 focused on what Madoff allegedly was doing in
22 order for him to have made money in a down
23 market.

24 As I said, at the initial stages,
25 and indeed again when I was looking at that

1 array of statistics that you were showing me,
2 that I would expect that Mr. Madoff would have
3 been able to make money in up markets, perhaps
4 not as much, and would not lose as much in down
5 markets.

6 Q. And the array of statistics, are
7 you talking about the statistics set forth in
8 the Promeo document?

9 A. Yeah, I'm talking about the
10 statistics that you had me look at before and,
11 as I said, at the initial stages that if I think
12 about -- if I thought about the philosophy and
13 the process and procedures as he outlined, I
14 would expect to see that in terms of the
15 performance.

16 And what I was curious about was
17 how he was actually able to make money in down
18 markets, and in the couple of instances that I
19 looked at, he was able to make money because he
20 was able to time accurately the pricing of some
21 of the options.

22 Q. Do you know if -- strike that.

23 And this is what you did in order
24 to understand how Mr. Madoff was making money in
25 a down market; is that correct?

1 A. It's what I looked at, yes.

2 Q. And do you know for a fact if
3 Mr. Merkin was also -- went through a process
4 similar to what you just explained?

5 A. I don't know what Mr. Merkin might
6 have done but I, again, as I said, in various
7 things that I had read, Mr. Merkin believed that
8 through some combination of experience in the
9 markets, access to order flow, that he was able
10 to time the pricing of securities in a way that
11 would allow him to generate returns.

12 Q. But you don't know if Mr. Merkin
13 actually did an analysis of order flow to
14 determine if the returns in the Madoff fund
15 BLMIS accounts were the result of order flow; is
16 that correct?

17 MR. STEINER: Objection to form.

18 MS. HOANG: I'm sorry, let me
19 rephrase it.

20 Q. Do you know for a fact if
21 Mr. Merkin actually did an analysis to determine
22 if the returns in the Madoff BLMIS account was
23 the result of order flow?

24 MR. STEINER: Objection to form.

25 A. I don't know if he did, but I

1 don't know how you could possibly determine
2 that.

3 So, I think what I said was that
4 in various things that I have read, I inferred
5 that Mr. Merkin knew that Mr. Madoff had, by
6 virtue of his long experience in the markets and
7 potentially by virtue of his access to order
8 flow, that he was capable of using that to time
9 the markets in order to produce the returns that
10 he was producing.

11 Q. Do you know if Mr. Merkin actually
12 verified that the access to order flow could
13 generate the returns that were in the Madoff
14 fund accounts?

15 A. I'm sorry, that's not what I said.
16 What I said was that I believed that -- I
17 inferred from what Mr. Merkin said that he knew
18 that some combination of market experience and
19 knowledge and access to order flow could, and
20 indeed would be used to help him time the
21 markets and producing superior returns. That's
22 as much as I know.

23 Q. And you're inferring that based on
24 the documents that --

25 A. Based on a whole array of things

Picard v Merkin

Jeffrey Weingarten 7/15/2015

Page 215

1 returns in down markets that you consider for
2 market timing?

3 A. The answer to that question is
4 yes, and it also -- what I indicated is that it
5 is also the pricing of individual securities,
6 and in some cases the pricing of options, which
7 is a skill that he apparently had. And when I
8 say he apparently had, as I indicated earlier,
9 had he actually made the investments that he
10 said he made, he would have made money in a down
11 market.

12 So there was no chicanery, there
13 was no -- this was actually not influenced by
14 the fraud in any way. That if he indeed had
15 made the investments that he allegedly made over
16 that period of time, he would have made money in
17 a down market, and the ability to do that was a
18 function of his ability to accurately take
19 advantage of the pricing of certain of the
20 instruments in which he was investing.

21 Q. So pricing is a component of your
22 market timing, your understanding of market
23 timing --

24 A. The timing of the pricing of those
25 instruments, yes, absolutely.

1 Q. Do you know for a fact whether
2 Mr. Merkin also had this same understanding?

3 A. I don't know what Mr. Merkin's
4 understanding was, other than what I said
5 before, that I inferred that he believed that
6 amongst Mr. Madoff's abilities and amongst the
7 tools that Mr. Madoff could use to generate
8 superior returns, were his ability, by virtue of
9 his experience and perhaps access to order flow,
10 to time the markets and accurately predict price
11 movements in the instruments to generate those
12 returns.

13 Q. Mr. Weingarten, can you take a
14 look at page 4 of your report, your initial
15 report. It's paragraph 4 of that report.

16 A. Page --

17 Q. Page 4, paragraph 4.

18 A. Beginning with?

19 Q. Let me double check that
20 reference. Hold on one second.

21 It's the fourth full paragraph,
22 it's the last sentence.

23 A. "It was clear from the outset that
24 Mr. Merkin --"

25 Q. Yes. If you look at, "In my

1 opinion."

2 A. Yes.

3 Q. Is it your opinion that Mr. Merkin
4 could rely in large part on Mr. Madoff's
5 reputation as part of his due diligence?

6 A. Yes.

7 Q. And is it your opinion -- strike
8 that.

9 And do you have an understanding
10 of what Mr. Merkin's knowledge of Mr. Madoff's
11 reputation was?

12 A. Yes, I have an understanding of
13 it.

14 Q. Can you tell me.

15 A. But it's my understanding, not
16 necessarily his understanding, but my
17 understanding was that, as I indicated in here,
18 there was a long-standing relationship that was,
19 in part, personal, in part professional, and in
20 part having to do with the positions of
21 responsibility that he held within the financial
22 community. And indeed one that was augmented by
23 many in-person meetings over the period of time
24 in which he was investing.

25 Q. Do you have an understanding of

1 Madoff was able to generate positive returns in
2 a down market. And why, if those circumstances
3 were repeated, he would always generate positive
4 returns in down markets.

5 Q. And that's based on looking at
6 those two or three transactions that you
7 referred to before in 2004, 2007; is that
8 correct?

9 A. Looking at those transactions,
10 understanding why the underlying pricing of some
11 of the instruments in which he invested could
12 generate the kinds of returns he did, and
13 understanding that, as I said, under similar
14 conditions he would almost always, if not
15 always, generate positive returns in down
16 markets, yes.

17 Q. And do you have an understanding
18 if Mr. Merkin performed the type of analysis
19 that you've just described in order to determine
20 the positive returns in a down market?

21 A. As I said before, I'm not sure
22 what analysis Mr. Merkin did. I infer from
23 everything that Mr. Merkin -- not everything. I
24 infer from the things that Mr. Merkin has said,
25 that he understood that through some combination

1 of experience, access to order flow, that Merkin
2 was able -- sorry. That Madoff was able to use
3 a variety of tools to time markets and price
4 instruments in a way that would permit him to do
5 substantially better than the market over a
6 period of time.

7 And that presumably, and again
8 this is not -- I would infer that since he was
9 looking at the performance on a fairly regular
10 basis, he would have been aware that there were
11 occasions in which Madoff allegedly made money
12 in down markets.

13 Q. Can you turn to page 5 of your
14 initial report. You see that second full
15 paragraph, the first two sentences -- first
16 three.

17 A. I'm sorry, the first full
18 paragraph?

19 Q. The second full paragraph.

20 A. Second full paragraph.

21 Q. Apologize for that. Starts,
22 "Another, but absolutely critical, part." Do
23 you see that?

24 A. Yes.

25 Q. If you could take a look at --

1 actually, just take a look at the whole
2 paragraph.

3 A. Yes.

4 Q. And when you say in that second
5 sentence, "by that I mean get your money back,"
6 are you talking about redemptions?

7 A. Yes.

8 Q. Have you reviewed the redemption
9 history of the Merkin funds?

10 A. I have not gone through ever
11 request for redemption to see if it was met.

12 Q. Okay. And when we're talking
13 about redemptions, I just want to make sure
14 we're on the same page. It's redemption request
15 to BLMIS is what we're talking about?

16 A. Yes.

17 Q. Are you aware that there's periods
18 of years where there was no redemptions from the
19 Merkin funds to -- no redemption request from
20 the Merkin funds to BLMIS?

21 A. I'm not aware of it but it
22 wouldn't surprise me if that were the case.

23 Q. Why wouldn't it surprise you?

24 A. It would be unusual in a fund that
25 was performing consistently well to have massive

1 with -- not something I concerned myself with.

2 Q. Okay. Would the ability to take
3 redemptions in a hedge fund be a characteristic
4 that you expect to see in all hedge funds?

5 A. So, hedge funds have various
6 policies with respect to redemption. And some
7 of them limit redemptions to monthly, some to
8 quarterly, some to annually. Some limit
9 redemptions in absolute terms.

10 So there are varying degrees in
11 which hedge funds permit redemptions from their
12 funds.

13 Q. Do you know what the redemption
14 policy was at BLMIS?

15 A. I'm not aware of any stated
16 redemption policy, and so I would infer from
17 that that there was monthly liquidity in the
18 Madoff funds.

19 Q. When you mean monthly liquidity,
20 are you talking about the availability of monies
21 in the Madoff funds, or -- strike that.

22 What are you talking about when
23 you talk about monthly liquidity?

24 A. So that if you had an investment
25 with Madoff funds and you wanted to withdraw

Picard v Merkin

Weingarten 7/15/2015

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Page 256

1 ERRATA SHEET

2

WITNESS NAME: JEFFREY M. WEINGARTEN

3

PAGE/LINE

CHANGE

REASON

4

5

See attached errata sheet

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Picard v. J. Ezra Merkin, et al., No. 09-1182 (SMB)
Errata to the Transcript of the Deposition of Jeffrey M. Weingarten
July 15, 2015

Cite	Original Text	Change	Reason
20:12	broker-dealer and asset management	broker-dealer and asset manager	Clarity/Typo
28:4-5	Goldman Sachs asset management international	Goldman Sachs Asset Management International	Typo
30:21	swarth	swath	Typo
31:3	an investment opportunities	an investment opportunity	Typo
50:4	at all time	at all times	Typo
77:3-4	I think there are three other people directly report to him.	I think there are three other people who directly report to him.	Clarity/Typo
111:14	GSAMs, Golden Sachs asset management	GSAM, Goldman Sachs Asset Management	Typos
113:23-24	A. Um-hum. It's the second from the last paragraph, "It is very clear."	A. Um-hum. Q. It's the second from the last paragraph, "It is very clear."	Clarity/Typo
115:16-17	other people who investment philosophy	other people whose investment philosophy	Clarity/Typo
118:23-24	understanding of what it was his investment philosophy was	understanding of what his investment philosophy was	Clarity/Typo
134:9-10	there would be different return profile	there would be a different return profile	Clarity/Typo
147:9	times that options expiration.	times that options expire.	Clarity/Typo
173:3	would not have produced the kind of results.	would not have produced those kind of results.	Clarity/Typo
189:9-10	when Mr. Merkin was investing with Mr. Madoff was still receiving	when Mr. Merkin was investing with Mr. Madoff, I was still receiving	Clarity/Typo
193:11	from most of my tenure	for most of my tenure	Typo
219:7	offered me \$400 billion	offered me \$400 million	Clarity/Typo
231:6-7	you would experience massive redemptions.	you would not experience massive redemptions.	Clarity/Typo

Picard v Merkin

Weingarten 7/15/2015

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Page 257

1 JURAT

2 I, JEFFREY M. WEINGARTEN, have
3 read the foregoing deposition and hereby affix
4 my signature that same is true and correct,
5 except as noted above.

6 
JEFFREY M. WEINGARTEN


7 THE STATE OF New York

8 COUNTY OF New York

9
10 Before me, Connie Liu, on this
11 day personally appeared Jeffrey M. Weingarten
12 known to me (or proved to me on the oath of or
13 through passport (description of identity
14 card or other document) to be the person whose
15 name is subscribed to the foregoing instrument
16 and acknowledged to me that he/she executed the
17 same for the purpose and consideration therein
18 expressed.

19 Given under my hand and seal of office on
20 this 13th day of August, 2015.

21 CONNIE LIU
22 NOTARY PUBLIC-STATE OF NEW YORK
No. 01LI6285845
23 Qualified in Kings County
My Commission Expires July 15, 2017


NOTARY PUBLIC IN AND FOR
THE STATE OF NY

24
25 My Commission Expires: July 15, 2017.

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